

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARION UTER, et al.,)
)
Plaintiff,)
)
vs.) Civil Case No.: 1:04-279-BH-C
)
LINDA PEACOCK, et al.,)
)
Defendant,)

ORDER

This matter is before the Court on several motions regarding depositions and affidavits the parties seek to strike or supplement in support of their positions on the summary judgment issues. First, both parties have filed Motions (Docs. 152 & 154) to Strike. Peacock alleges (Doc. 152) that Plaintiff/Counterclaim Defendant Uter's affidavit of June 23, 2005 should be stricken because it is a fraud on the Court, violates the parol evidence rule and violates F.R.E. Rules 701 and 802. Uter submits (Doc. 154) that the affidavit of Chad Lipscomb, filed in conjunction with Peacock's Reply (Doc. 151), should be stricken as untimely. The Court finds that the parties' Motions (Doc. 152 & 154) to Strike are **due to be DENIED**.

Though both parties allege different grounds for motioning to Strike the relevant affidavits, the Court denies the motions because it did not rely on either affidavit in ruling on the Motion (Doc. 89) for Partial Summary Judgment. Neither affidavit contained any information that was or would have been influential to the Court in determining the legal claims at issue. Therefore, the Court finds that striking the affidavits is unnecessary and the parties' Motions (Docs. 152 & 154) are **hereby DENIED**.

Uter also seeks to file excerpts (Doc. 156) from Peacock's deposition to rebut the contentions of

Chad Lipscomb in his affidavit. Peacock, in turn, has filed a Motion (Doc. 158) to Respond and a Response (Doc. 159) to Uter's motion. Because the Court is not basing any of its legal findings regarding the issues currently before it for summary judgment on the testimony of Chad Lipscomb, the parties' motions are **hereby DENIED** and Peacock's Response is **hereby STRICKEN** from the record.

So ORDERED, this 1st day of August, 2005.

s/ W. B. Hand
SENIOR DISTRICT JUDGE